Interim Report to the Legislature on Intermediate Sanctions

Massachusetts Sentencing Commission
Intermediate Sanctions Committee

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Contents of Interim Report

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I. Introduction

The purpose of this Interim Report is to provide a status report to the Legislature on the work of the Intermediate Sanctions Committee of the Massachusetts Sentencing Commission. It is intended to serve as a complementary report to the Interim Report to the Legislature by the Massachusetts Sentencing Commission, with the aim of providing more details on the Commission's particular emphasis on the area of intermediate sanctions.

As outlined in the Massachusetts Sentencing Commission's Interim Report, the mission of the Commission is to promote truth in sentencing by formulating uniform sentencing policies and by developing systematic sentencing guidelines for the Commonwealth. A critical aspect of this mission is the decision to integrate intermediate sanctions into the sentencing guidelines so that the use of intermediate sanctions both generally and in individual cases is consistent with the overall sentencing policies adopted by the Commission.

Taking its direction from the truth in sentencing statute (st. 1993, c. 432), which directs the Commission to recommend sentencing policies and practices which "punish the offender justly," the Sentencing Commission has articulated a policy statement which emphasizes just punishment as the central purpose of sentencing. Just punishment should be proportional to the gravity of the offense, taking into account the harm done to the victim or to society and the culpability of the offender, along with the seriousness of the offender's criminal history. By emphasizing just punishment as the primary purpose of sentencing, the Commission does not dismiss the importance of other purposes such as deterrence, rehabilitation, or incapacitation. For example, rehabilitation programs may be important in the correctional setting, and, in fact, the statute provides some incentive for participation in such programs by retaining limited earned good time and the possibility of parole. In the development of its recommendations concerning intermediate sanctions, the Commission believes it can promote just punishment and fulfill the legislative directive to ensure that persons sentenced to intermediate sanctions are provided opportunities for appropriate treatment and rehabilitation.

The Intermediate Sanctions Committee believes that creating a new array of sentencing options will make sentencing more just and effective for offenders, will enhance public safety and will promote law-abiding behavior, while more effectively and economically managing prison and jail capacity. It is essential not only to define the various types of intermediate sanctions, but to articulate the purpose, availability and relevant criteria so that such sanctions will be imposed fairly and consistently across the Commonwealth.

In order to set a direction for its work, the Intermediate Sanctions Committee reviewed the experiences other jurisdictions have had with intermediate sanctions, conducted a thorough review of the current literature, participated in national conferences on sentencing guidelines and intermediate sanctions, conducted a number of focus groups which addressed issues relating to intermediate sanctions, reviewed previous Massachusetts studies relating to intermediate sanction proposals, made a number of site visits to ongoing programs, and drew on the expertise and experience of Commission members and affiliates. The Committee remains committed to an open process to elicit input from all interested parties and to work with the Legislature and others on the development of legislation that will enhance the development of intermediate sanctions in Massachusetts.

As set forth in Chapter 432, the Intermediate Sanctions Committee includes representatives of the Executive Office of Health and Human Services, the Executive Office of Public Safety, and the Office of the Chief Justice for Administration and Management of the Trial Court, along with members of the Massachusetts Sentencing Commission. A list of the members of the Intermediate Sanctions Committee is attached. Other members of the Sentencing Commission typically participate in the meetings of this Committee.

Mission of the Intermediate Sanctions Committee

The mission of the Intermediate Sanctions Committee is articulated in Section Six of the truth-in-sentencing statute as follows:

> The Massachusetts sentencing commission, the chief justice for administration and management of the trial court, the secretary of health and human services, and the secretary of public safety are hereby authorized and directed to make an investigation and study for submission to the house and senate committees on ways and means, not later than twelve months after the effective date of this act, relative to developing a full range of sentencing

options, included but not limited to probation, home confinement, intensive supervision, community service, restitution, day reporting, day fines, other intermediate sanctions, incarceration in the house of correction, and prison. The purpose of such sanctions shall be to enhance public safety and to ensure that persons so committed are:

(a) held accountable, in degree or kind, for offense committed;
(b) supervised in order to enhance public safety and to ensure that the conditions of sentence or parole are fully complied with; and,
(c) provided opportunities for appropriate treatment and rehabilitation.

Such study shall include:

(a) the definition of terms and conditions of each sentencing option;
(b) an inventory of existing sentencing options;
(c) a plan for the development, implementation, administration, and funding of existing expanded and new sentencing options;
(d) a plan to research and evaluate sentencing options; and,
(e) a plan to incorporate rehabilitation services, including but not limited to, drug and alcohol treatment, violence prevention, sex offender programming, job readiness, education and literacy and other human services programs, and a plan for delivery of such services.

II. Definition of Intermediate Sanction

As set forth in the truth in sentencing statute, intermediate sanctions "mean any number of sanctions which are served or satisfied by the offender within the community in which the offender committed the offense or in the community in which the offender resides, and may include, but shall not be limited to standard probation, intensive supervision probation, community service, home confinement, day reporting, residential programming, restitution and means-based fines;" (st. 1993 c. 423, Section 3).

The Sentencing Commission uses the term intermediate sanctions to refer to both specific sentencing options or programs and to the overall concept of a graduated range of sentencing choices defined by articulated sentencing policy. As they are commonly defined, intermediate sanctions include both "front-end" sanctions imposed by the courts, which are typically administered through probation, and

"back-end" sanctions which incorporate various degrees of restriction as well as program components, which are most often administered by corrections officials or parole authorities.

The Intermediate Sanctions Committee believes both front-end and back-end intermediate sanctions should be available, but, at this time, the Committee has concentrated its focus on front-end sanctions.

Distinction Between Sanctions and Programs

The Committee has made a distinction between an intermediate sanction, which refers to the degree of restriction or constraint on personal liberty associated with the order of the court imposed in response to a violation of the law or a court order, and a program, which may be a component of an intermediate sanction. For example, an intermediate sanction - such as day reporting, house arrest and electronic monitoring - may incorporate a program - such as job training, education, and any treatment - but such a program is not the sanction.

As described in Section VI of this report, the Sentencing Commission has adopted the concept of a continuum of intermediate sanctions, according to such considerations as the severity of the punishment or constraint on personal liberty associated with the sanction, and has identified four levels of intermediate sanctions, ranging from administrative probation to residential or intensive supervision programs. The Committee recommends that program components, such as drug and alcohol counseling, education, and job training, should be available at every level of intermediate sanction as they are appropriate to the needs of the individual offender. The Committee also recommends that economic sanctions, such as fines and restitution, should also be an integral part of every sentencing decision.

Goals of Intermediate Sanctions

Intermediate sanctions can potentially serve a number of goals. Philosophical approaches to criminal sentencing and sanctioning include punishment theory, incapacitation theory, deterrence theory and rehabilitative theory. Among the practical goals are punishing the offender, enhancing public safety, reducing prison crowding, rehabilitating the offender, saving money on corrections costs, preventing recidivism, and enhancing the range of punishments currently available.

Before the Intermediate Sanctions Committee could begin to develop a plan for intermediate sanctions and for integrating that plan into the sentencing guidelines,

the Committee members agreed that they must articulate precise goals for a system of intermediate sanctions and adopt a set of principles and values that would guide their deliberations. These goals and principles, once established, function as both as the criteria by which the Committee's decisions would be made and provide the basis by which the success of the system that is established may be evaluated.

Using the Intermediate Sanctions Handbook, published jointly by the National Institute of Corrections and the State Justice Institute, as a framework for discussing goals and values, the Committee agreed upon the following goals relating to intermediate sanctions:

System Level Goals of Intermediate Sanctions

- Enhance public safety
- Improve credibility of the criminal justice system
- Facilitate processing of cases in a timely manner
- Wise use of resources
- Cost effectiveness
- Appropriate use of limited space in prisons and houses of correction, not necessarily the elimination of prison overcrowding
- Each participant in the criminal justice system sharing in the responsibility for meeting its goals
- Make sentencing more just and effective for offenders

In accepting responsibility for creating sentencing guidelines and a system of intermediate sanctions, the Sentencing Commission is cognizant of the needs of the criminal justice system to swiftly process the volume of cases, to make the best use of public moneys and resources, and to promote the public's confidence in the ability of the courts, corrections officials and other criminal justice agencies to fulfill their obligation to the citizens of the Commonwealth.

The General Offender-Oriented Goals of Intermediate Sanctions

- Punishment
- Rehabilitation
- Deterrence - specific
- Deterrence - general
- Incapacitation
- Restoration

As with all types of sentencing, intermediate sanctions reflect decisions as to why punishment is imposed for particular criminal behavior. Intermediate sanctions incorporate each of these sentencing purposes in some way.

Goals of Application in General

- Proportionality
- Uniformity
- Equity
- Parsimony
- Humane treatment
- Swift sure action for motivation
- Need for credible threat of incarceration in order to enforce conditions of probation and other intermediate sanctions

Sanctions must also be meaningful and instill an incentive on the offender to comply.

Goals of Application in Particular Cases

- Restriction of an offender's liberty of movement to certain times or destinations or both
- Payment of full restitution to a victim or the community
- Reduction or elimination of substance consumption
- Completion of a work assignment
- Completion of treatment or training programs
- Reduction of risk of future criminal behavior and promotion of law abiding behavior

Although the more general goals of sentencing described above operate to define the range and purpose of sanctions established, because the circumstances of each offender are unique, it is necessary that individual sentencing decisions reflect specific objectives for the particular case and express how the sentencing goal is to be met.

III. Review of the Literature on Intermediate Sanctions

Among the first tasks of the Committee was a review of the intermediate sanction literature. The Committee was fortunate to have the assistance of a law/public policy student who conducted a comprehensive review of the literature on

intermediate sanctions. In addition to this broad review of intermediate sanction studies, the Committee also concentrated on intermediate sanction studies in Massachusetts, including:

- Report of the Governor's Special Commission on Correction Alternatives (1986);
- The Crisis in Corrections and Sentencing in Massachusetts (1991);
- A Matter of Just Treatment: Substance Abuse and the Courts (1995); and,
- EOPS Study of Intermediate Sanctions (1992).

Report of the Governor's Special Commission on Correction Alternatives. This report, published in 1986, centered on which alternatives might be viable for portions of the current "prison" population. The report examined programs that would ensure public safety, and the rehabilitation of the low-risk offender consistent with reserving limited jail space for the high risk offenders. The Commission found that while there were not significant numbers of individuals inappropriately sentenced to incarceration, profiles of offenders currently succeeding under intensive probation supervision were similar to certain segments of the population of the House of Correction. Based on its study, the Commission concluded that these individuals could succeed if placed on intensive community correctional alternatives.

The report advocated the expansion and enhancement of these options as a way of relieving jail overcrowding, as well as reintegrating offenders into society.

Significantly, the report found that substance abuse plays a major role in the criminal activity of inmate and high-risk probationers. The report concluded that strategies for early identification of these individuals must be a priority at every stage of the criminal justice process, and that any community correctional program must have an aggressive regimen of treatment and supervision. Moreover, developing a network of correctional alternatives throughout the Commonwealth which include early diagnosis and treatment of substance abuse is crucial and will impact prison populations in the long term through lower crime and recidivism rates.

The Commission recommendations included: establishing or expanding structured residential treatment centers across the Commonwealth to serve institutional and court clients, expanding halfway house programs throughout the Commonwealth, utilizing day reporting centers for a variety of services, and expanding intensive probation services for certain probationers, as well as for some probationers facing surrender violations. In discussing restitution and community work service programs, the report considered them viable alternatives when the

primary purpose was to punish rather than to restrain. The focus of these sanctions must be exacting punishment from the offender while not putting the public at risk.

Home confinement, through electronic monitoring, curfew and reporting to a community supervision center such as a day reporting center was considered a promising correctional alternative to those who would be sentenced to short term incarceration. The reports noted that field resources would have to be made available to the houses of correction to monitor these offenders. These centers could also be used for pre-release placement of selected offenders, or for pre-trial release in lieu of bail.

The report also looked into the use of community correction programs as community reintegration following periods of incarceration and believed that their function in this area should be expanded.

The Crisis in Corrections and Sentencing in Massachusetts. In 1991, this report of the Task Force on Justice, a joint project of the Boston Bar Association and the Crime and Justice Foundation, concluded that the system of punishment in Massachusetts was at the same time too lenient and too harsh, with too many individuals receiving little or no sanction, and others receiving sanctions in great disproportion to their offense. The stark alternatives of a prison sentence of total incarceration, often without treatment, and probation, which at times appears to be little punishment at all, was insufficient to punish offenders, while promoting rehabilitation and protecting the public. The Task Force underscored the need to develop intermediate levels of supervision, as well as treatment programs for offenders. The report urged that a graduated scheme of intermediate sanctions be developed to enhance public safety and more efficiently utilize prison space. Several types of intermediate sanctions were described, including day fines, restitution, community service, home confinement, intensive probation supervision, electronic monitoring, half way houses and day reporting centers. The report concluded that such a graduated sanction structure would enable a degree of "customized sentencing," depending on the risk and needs of the offender, while maintaining public safety, offender accountability, and rehabilitation.

A Matter of Just Treatment: Substance Abuse and the Courts. Echoing the concerns expressed by the preceding publications was the report of the Supreme Judicial Court Substance Abuse Project Task Force. This report, issued in March of 1995, stressed the serious impact that substance abuse plays in criminal activity. The Task Force found that substance abuse was a significant factor in 80 to 85 percent of criminal cases. The Task Force recommendations, specifically aimed at the treatment

of criminal cases, included assessing defendants, linking them with treatment, and conducting ongoing monitoring of compliance with court orders regarding treatment. The Task Force concluded that "imposing sanctions without treatment is short-sighted, (and) ineffective," noting that combating substance abuse improves public safety, and is cost-effective in terms of recidivism rates and reduced health care costs.

Among the many Task Force recommendations, several were specifically applicable to criminal offenders.

- Each court should have available a substance abuse specialist to work in conjunction with the probation department. This specialist would provide assessments and information regarding an offender's substance problem, would recommend treatment, and would help locate the appropriate resource.

- Expand the development of drug court diversion programs across the state.

- Expand the availability of intermediate sanctions and community-based punishment beyond the traditional levels available. This recommendation recognized that while some individuals required incarceration, others could be effectively supervised in the community without threatening public safety, if substance abuse treatment and higher levels of supervision and control were available.

- Testing should be available at each courthouse to identify, assess, deter, supervise and treat substance abusers.

- Improve coordination among the office of the Commissioner of Probation, the Sheriffs, Department of Correction and The Parole Board to ensure the availability of an efficient and effective continuum of substance abuse assessment and treatment throughout the criminal justice process.

- The Task Force urged the Sentencing Commission to "pay conscious and sustained attention to the role of substance abuse in the lives of a substantial majority of criminal offenders" , and not to regard the issue of substance abuse as a "peripheral factor in its determinations."

EOPS Study of Intermediate Sanctions. In 1992, the Secretary of Public Safety appointed an Intermediate Sanctions Committee to study the feasibility of developing a range of intermediate sanctions as an alternative for handling short-term, nonviolent, lower risk inmates who were being sent to Houses of Correction. The objective was to maximize correctional resources and to reduce prison overcrowding. Specifically, the aim was to divert 1,100 county inmates to community based programs, thereby making some county correctional beds available for state prison inmates. This intermediate sanctions initiative was clearly a response to prison overcrowding, and the effort was more oriented to "back-end" programs administered by the Sheriffs, the Parole Board, or the Department of Correction for sentenced offenders, than it was to "front-end" programs that might be administered by the courts or probation.

The Commissioner of Correction served as Chair of the Committee which included representatives of the Parole Board, Probation, and the Sheriffs' Departments. The Committee engaged the Crime and Justice Foundation to conduct the feasibility study.

The study spotlighted several issues that were considered key to the success of an intermediate sanction initiative, including:

- state and local efforts to develop support and understanding for the use of intermediate sanctions both among policy officials and the general public;
- clear responsibility for central coordination and implementation of the intermediate sanctions initiative;
- diligent participation by the Parole Board;
- improved mechanisms for preparing candidate inmates, conducting appropriate reviews, and making timely placement of inmates;
- deliberate discussions between the Department of Correction and County Sheriffs to define criteria of state inmates to be housed in county facilities; and,
- strong guidance as to the structure of intermediate sanction programs that builds on existing successful efforts, supports regional expansion, encourages sharing of resources, links with institutional programming, and utilizes community resources.

While this study identified a number of "barriers" - e.g., outstanding warrants or mandatory sentences - that would inhibit the full utilization of intermediate sanctions, the authors concluded that the results were generally encouraging with respect to the general support for intermediate sanctions and the willingness of the criminal justice agencies surveyed to participate in the development of such initiatives. The study also found "the requisite experience, capability and willingness to make the intermediate sanctions initiative a success." It concluded:

> With proper leadership and careful attention to implementation requirements, this initiative can achieve what earlier efforts have failed to achieve - gaining full acceptance of intermediate sanctions as meaningful components in the Commonwealth's criminal punishment policy.

IV. Focus Groups, Site Visits and National Conferences

Focus Groups

For intermediate sanction programs to be successful, all parts of the criminal justice system must participate in their development. In order to serve this purpose, and in keeping with the mandate of the Sentencing Commission to use an open process in the development of policies, the Commission has conducted 27 focus group meetings with various constituency groups, including prosecutors, defense counsel, judges, victims and other public and private agencies. These focus groups discussed a number of matters relating to the Commission's work, including the use and development of intermediate sanctions. Following are some of the views expressed by participants in these discussions.

- <u>There is widespread support for the greater use of intermediate sanctions</u>. Not only do prosecutors, defense counsel and judges welcome the availability of more options, but victims' groups also recognize the value of these alternatives. There is a need for early intervention with youthful offenders with a sanction, short of incarceration, which contains an element of restraint and punitiveness, and which requires the offender to give something back to the community. Parole officials also expressed the need for "halfway" house type programs to provide community reintegration for paroled offenders as they work to maintain a successful lifestyle in the community. This alternative between prison and the

community and between the community and a possible return to prison will more effectively utilize the resources of the criminal justice system.

- The absence of additional options contributes to jail overcrowding. A significant majority of offenders are substance abusers. Given the inadequate number of substance abuse treatment facilities (e.g., detox facilities) in the community and in correctional settings, much needed treatment is not being provided. Parole officials noted that jails are now serving as detox facilities in the absence of such facilities. In terms of public safety, it is often preferable to provide a supervised transition into the community with substance abuse programming rather than to release an offender with no supervision after the sentence has been served.

- The absence of additional options and subsequent jail overcrowding results in the release of more violent repeat offenders with minimal supervision. Probation officials asserted that the number of offenders convicted of crimes of violence who are on probation has been steadily increasing. These include significant increases involving those convicted of crimes of domestic violence and child sexual abuse. Because of a lack of resources, many batterers do not participate in batterers' treatment programs. Such perpetrators of domestic violence need to be more closely monitored.

- For sanctions to work effectively, there must be a swift and flexible response to program violations. A continuum of sanctions would permit an increase in supervision in appropriate relation to the severity of the misconduct. Program participation cannot be adequately enforced if there is a lengthy procedure before any action can be taken. One suggestion made to address this problem would to require an offender to agree in advance to an increase in supervision upon evidence of a violation. Another is to commit the offender to the custody of either a sheriff or the Department of Correction to serve the intermediate sanction. The Parole Board procedure for rapid response to violations provides yet another model. Victims groups emphasized that in order to engender community confidence, compliance with program conditions must be strictly enforced.

- There is a need for uniformity and consistency among courts in the application of intermediate sanctions. Presently, courts vary in the manner in which they address violations of probation. Intermediate

sanction programs are available only on a limited basis in particular courts. Resources must be distributed to all areas of the state.

- It is important to avoid widening the pool of offenders under supervision unless the system also addresses jail and prison overcrowding. Intermediate sanctions are intended to fill the gap that currently exists between unsupervised probation and incarceration and intended to be applied to those who need greater supervision but not necessarily imprisonment. There is a need for the screening and assessment of offenders to ensure appropriate intermediate sanction placements.

Conferences on Intermediate Sanctions

In addition to the focus groups, two Commission members attended a national conference on intermediate sanctions held in Ann Arbor, Michigan, in May, 1995. Some of the specific impressions the members gained from the conference were:

- A majority of states have some sort of community corrections system, most of which were established independently of a sentencing commission or sentencing guidelines. Experience has shown that it is critically important to incorporate intermediate sanctions within the sentencing guidelines.

- Three factors key to the success of intermediate sanctions are:

  1) linking the sentencing commission to the planning and development of intermediate sanctions;
  2) obtaining complete and accurate empirical data on offenders and programs and their criteria; and
  3) having a clearly defined set of goals.

- Massachusetts is one of the few states with a state-wide trial court. Many other states have courts and community corrections programs that are county funded and controlled. Intermediate sanctions in those jurisdictions are developed locally, which promotes disparity from locality to locality, but reduces local incarceration costs, and provides a directly observable economic benefit to county residents. The extent of availability and success of community corrections depends on the involvement and commitment by local judges who, in many cases, are elected.

- There is much greater popular support for intermediate sanctions than policymakers believe. Sixty-five to seventy percent of the public supports their use while policymakers rate public support at only about twenty percent.

- The system must be designed to avoid a net-widening effect, i.e., imposition of additional sanctions or components on offenders who would otherwise have been released with only minimal supervision.

- Other states have experienced conflicts over the administration of intermediate sanctions and stress the importance of not putting all intermediate sanctions under the control of any one agency.

- The value of having pre-sentence reports was underscored by all jurisdictions with intermediate sanction programs. Without appropriate presentence risk assessment, intermediate sanctions cannot be effectively utilized.

- A constant theme expressed throughout the conference was the need for training all system participants to ensure shared understanding of a program's objectives.

Ten members of the Massachusetts Sentencing Commission, including members of the Intermediate Sanctions Committee, attended the National Conference of Sentencing Commissions in Boston during July, 1995. During this conference, two sessions were devoted specifically to the topic of intermediate sanctions. Intermediate Sanctions Committee Chair Pamela Hunt participated on the Intermediate Sanctions Panel; Hon. Margaret R. Hinkle participated on the Alternatives to Incarceration Panel; and, other Commission members also served on several of the conference panels. Commission members were able to discuss in detail with their counterparts from other jurisdictions matters relating to integrating intermediate sanctions with sentencing guidelines, targeting appropriate offenders for intermediate sanctions, handling of violations, and funding and administration of intermediate sanctions.

Site Visits

Several members of the Commission conducted a site visit in March, 1995, to intermediate sanction programs which are presently in operation in Hampden County.

These programs include a day reporting center, the Criminal Justice Collaborative and the Western Massachusetts Correctional Alcohol Center.

The day reporting center was established by the Hampden County Sheriff's Department in October, 1986, as the first of its kind in the nation. Offenders committed to the center must appear at the center on a daily basis and must either work or look for work and participate in counseling or other programs. Important components of the program are frequent drug testing and evening monitoring. Because it is operated by the Sheriff's Department and is considered an incarceration sentence, those who violate the rules can be immediately sanctioned. Of the more than 1300 offenders committed to the program, only two have been charged with committing another offense while participating in the program. The annual per capita cost of operating the day reporting center is approximately $7,000, compared to an annual per capita cost of approximately $28,000 for incarceration in a jail or house of correction.

The Criminal Justice Collaborative is a joint enterprise of the Hampden County District Attorney's Office, The Hampden County Sheriff's Department, the Trial Court in the Springfield District Court, and area social services. Together, they offer a continuum of five levels of intermediate sanctions aimed at non-violent, substance abusing offenders as a means of diversion and alternative sentencing. The levels utilize both the probation department and the sheriff's department as custodial officials and range from standard probation to day reporting and pre-release at the Hampden County House of Correction. Each escalating level of supervision includes appropriate substance abuse treatment options, including regular drug testing and other programs such as anger management, employment and education.

The Correctional Alcohol Center is one of several regional centers established to provide a treatment program for those convicted and incarcerated for driving under the influence of alcohol. The Center employs a treatment program which specifically addresses the offender's alcohol abuse.

Committee representatives also visited the Metropolitan Day Reporting Center operated by the Crime and Justice Foundation in Suffolk County, which provides both front-end and back-end supervision of sentenced offenders and probationers.

These programs demonstrate that innovative approaches to sentencing can achieve public safety while providing appropriate punishment at a substantially reduced cost.

V. Empirical Study

The truth in sentencing legislation mandates that a comprehensive research effort be undertaken in conjunction with the development of the sentencing guidelines and the preparation of the intermediate sanctions report. Specifically, the legislation mandates that the Sentencing Commission prepare "an inventory of existing sentencing options." To this end, the Intermediate Sanctions Committee reviewed program descriptions compiled by the Office of the Commissioner of Probation and by the Superior Court Probation Service. The Committee determined that there was a need for more extensive information concerning sanctions and programs in use in the District Court, Boston Municipal Court, and the Superior Court, as well as by the sheriffs, corrections, and parole and by other governmental and private agencies.

Consistent with the Sentencing Commission's commitment to empirical research and data collection, the Intermediate Sanctions Committee has stressed the importance of empirical research data. The Committee has compiled an inventory of intermediate sanctions that currently exist and is presently compiling other research data which will provide information on such matters as:

- the nature of existing sentencing practices to determine which offenders are presently being sentenced to probation and which are being incarcerated;
- the need for further development of intermediate sanctions; and,
- the development of empirical procedures for monitoring the implementation of intermediate sanctions and subsequently for evaluating the effectiveness of such sanctions.

Inventory of Intermediate Sanctions

The Committee has designed a two-phased approach for compiling an inventory of existing intermediate sanctions and programs. In phase one, the Committee prepared a survey questionnaire and distributed it to 180 sites - e.g., probation offices, parole offices, Sheriffs' Departments, Department of Correction, and private vendors - where intermediate sanctions or community correctional programs may be in use. Responses have been received and compiled and are currently being evaluated. Phase two, which is presently underway, involves in-depth follow-up interviews concerning the use and effectiveness of particular sanctions or programs.

The survey was designed to elicit information about the status of 24 different intermediate sanctions and component programs. The list of sanctions and program components included those enumerated in the legislation along with others which the Committee believed should be studied. The sanctions and programs on which information was collected include:

- Probation Supervision: Pre-Trial Probation; Risk Need Probation; DUIL Probation; Administrative Probation;

- Economic/Restorative Sanctions: Fines/Surfines; Probation Fees; Restitution; Victim/Witness Fees; Community Service; Work Release;

- Restrictive Sanctions: Day Reporting; Night Reporting; Home Confinement/House Arrest; Electronic Monitoring; Shock Incarceration; Halfway House/Pre-Release Center; Pre-Trial Supervision; Intensive Parole Supervision; and,

- Programmatic Components: Victim/Offender Reconciliation; Community Outreach; Drug/Alcohol/Substance Abuse; Drug/Alcohol Testing; Mental Health; Violence Prevention/Stress/Anger; Mental Retardation; OUI/DUIL; Sex offender; Certified Batterer; Domestic Abuse; Women's; Vocational/Job Training; Literacy training; GED Preparation; English as a Second Language; Residential/Housing Services.

The survey respondents were asked five questions: (1) the program funding; (2) the target population; (3) the current capacity; (4) the degree of need for expansion; and, (5) the person to contact for further information in phase two of the research.

While the Intermediate Sanctions Committee has concentrated on the "front-end" intermediate sanctions programs, the Committee recognized that some highly regarded intermediate sanction programs were also in use at the "back-end" of the system, particularly through the Sheriffs' Departments, the Parole Board and the Department of Correction. In order to be exhaustive in its data collection effort, the Committee covered these "back-end" areas in the survey. The survey respondents provided information on over 2,500 sanctions/program components.

In addition, the Sentencing Commission, in conjunction with the Office of the Chief Justice of the District Courts, requested input from the presiding justices in all

district courts in the Commonwealth. The Committee requested comment on any program which judges believed was of particular value or unique to their jurisdiction.

VI. Integration of Intermediate Sanctions and Sentencing Guidelines

The Truth in Sentencing statute sets forth in relevant part:

> For every criminal offense under the laws of the Commonwealth, the guidelines shall establish:
>
> (A) The circumstances, if any, under which the imposition of intermediate sanctions may be proper, and the circumstances under which imprisonment may be proper.
>
> (B) Appropriate intermediate sanctions for offenders for whom straight imprisonment may not be necessary or appropriate. In establishing such intermediate sanctions, the Commission shall make specific reference to noninstitutional sanctions, including but not limited to, standard probation, intensive supervision probation, community service, home confinement, day reporting, residential programming, restitution and means based fines. (st. 1993 c. 432 Section 3)

Consistent with the statutory mandate, the Intermediate Sanctions Committee recommended to the Sentencing Commission as a whole the following fundamental principles:

(i) Integration of intermediate sanctions within the sentencing guidelines grid.

(ii) Three distinct zones on the grid: one which specifies incarceration only a second, discretionary zone, and a third, where an intermediate sanction is the presumptive sentence.

(iii) A continuum of sanctions among four levels according to degree of supervision.

(iv) Maintain flexibility for the sentencing judge to select an appropriate intermediate sanction while defining as a matter of policy, some restriction on the availability of some sanctions for certain offenders.

The Commission has adopted these principles. As attachment D demonstrates, the proposed sentencing grid contains three zones. For the more serious crimes, including all crimes in offense levels 6-9, whatever the individual's criminal history, no intermediate sanctions are available unless the sentencing judge departs from the sentencing guidelines. For crimes in offense levels 4 and 5, no intermediate sanctions are available when a defendant has a criminal history category of E or F (for level 4 crimes) or D, E, or F (for level 5 crimes).

There is one qualification to the ban on intermediate sanctions for these crimes. The Committee recommends that fines and restitution be imposed in every appropriate case, subject to constitutional limits on ability to pay fines.

For the least serious crimes, the proposed sentencing guidelines grid contains a zone where only intermediate sanctions (and not incarceration) are available. This zone includes misdemeanor crimes where the defendant has no prior record or a minimal prior record.

The middle level on the proposed grid is a discretionary in/out zone, where either incarceration or an intermediate sanctions is permitted. The remaining portion of the grid falls within this category.

The Intermediate Sanctions Committee has identified four levels of intermediate sanctions which are classified by the degree of restriction on liberty and the intensity of supervision: (i) administrative probation; (ii) basic risk/need supervision; (iii) intensive supervision, and (iv) residential supervision. In Level I, the defendant would have minimal contact with the probation department. In Level II, the probation department would have periodic contact with the defendant. In Level III there would be almost daily contact with the defendant, and in Level IV the expectation is 24 hour supervision of the defendant. The types of sanctions in each level are illustrated in the chart below. Level IV, for example, includes such intermediate sanctions as halfway houses, inpatient alcohol or drug facilities, electronic monitoring, home confinement, and day reporting centers.

The Commission recommends that the sentencing judge impose a sentence to a particular level of intermediate sanction and has therefore integrated the four levels within the sentencing grid as seen in attachment D.

In order for sentencing judges to make informed decisions about the proper intermediate sanction to impose, the Intermediate Sanctions Committee recommends that the probation department prepare a pre-sentence assessment in every case. The Committee recognizes that the form of this assessment will necessarily differ between the District Court and the Superior Court because of varying case levels, but believes presentence information forms an integral part of the sentencing process as it informs the court about the offense, the offender, and the offender's suitability for an intermediate sanction.

In making its recommendations the Intermediate Sanctions Committee has examined and evaluated the work of other states and the Federal Government in the area of intermediate sanctions. Some states use so-called "exchange rates" or "units of punishment" in the context of intermediate sanctions. For example, six months of community service equals three months of electronic monitoring or one month in prison. The Committee has not recommended use of such exchange rates. Exchange rates have been viewed as injecting undue complexity into administration of intermediate sanctions.

The following chart provides an illustration of the nature of the levels of intermediate sanctions that are contemplated by the Committee.

Intermediate Sanction Level	**Examples of Intermediate Sanctions Available at that Level**
Level IV	Halfway House Inpatient Alcohol/Drug Facility Electronic Monitoring Home Confinement Day Reporting Center
Level III	Intensive Probation Supervision Special Curfew Supervision
Level II	Maximum Risk/Need Supervision Moderate Risk/Need Supervision Minimum Risk/Need Supervision
Level I	Administrative Probation Supervision

The Committee recognizes the need to retain flexibility for the court to impose an appropriate intermediate sanction, while providing parameters restricting the availability of intermediate sanctions for certain serious or violent offenses and certain repeat offenders. Where the Commission authorizes intermediate sanctions, it believes the sentencing judge should have considerable discretion to match the purposes of sentencing and the needs of the offender to the sanction and conditions imposed. As intermediate sanctions are integrated into the sentencing guidelines and as they are utilized in individual cases, sentences to intermediate sanctions must be commensurate with the seriousness of the offense and the suitability of the offender.

VII. Future Directions

(1) The Intermediate Sanction Plan

The intermediate sanction plan, encompassing a blueprint for the development, implementation, administration, and funding for intermediate sanctions, is the ultimate mandate of the truth in sentencing legislation to the Intermediate Sanctions Committee.

(2) Research and Evaluation of Intermediate Sanctions

The Committee continues to study the value and propriety of particular sanctions, to compile relevant data on existing sentencing practices, and to develop a research model by which the use of intermediate sanctions may be monitored and evaluated.

(3) Pre-Sentence Information Needs

As previously discussed, the Committee believes in the importance of having solid offender information at the time the sentencing decision is made, yet recognizes the practical realities posed by the volume of criminal cases, especially in the district courts where it is anticipated that most intermediate sanction sentences will be imposed. The Committee is exploring various methods by which risk-needs assessment can be made and appropriate information can be made available to the sentencing judge without impairing the courts' ability to effectively manage the flow of cases.

(4) Violations of Intermediate Sanctions

Since the Sentencing Commission has classified intermediate sanctions along a continuum of restriction on liberty, it is important to articulate a policy for handling violations of intermediate sanctions that is consistent with the use of that continuum. The policy regarding violations should address the criteria under which it would be appropriate to escalate the degree of restraints rather than to automatically impose incarceration as a response to violations, as well as the method by which violations and increased restrictions will be administered, consistent with the constitutional rights of the offender. Such intermediate sanctions are critical for certain offenders who violate parole, as well as certain probation violators.

(5) The Process of Assignment to Intermediate Sanctions

The Committee continues to discuss several important policy questions associated with the assignment of offenders to intermediate sanctions, the nature of an intermediate sanction sentence, and the process by which individuals will be sentenced to intermediate sanctions.

This interim report is intended to provide a summary of the work in progress by the Intermediate Sanctions Committee of the Massachusetts Sentencing Commission. The Commission welcomes comments and suggestions regarding the direction of its work on intermediate sanctions and sentencing guidelines.

Attachment A. Summary Listing of Focus Group Meetings

Victims Group - Female Victims
Victims Group - Homicide Survivors / Western Massachusetts
Victims Group - Homicide Survivors / Eastern Massachusetts
Victims Group - Mothers Against Drunk Driving
Victims Group - Rape Victims
Victims Group - Domestic Violence

Defense Counsel - Lowell Region
Defense Counsel - Springfield Region
Defense Counsel - New Bedford Region
Defense Counsel - Boston Region
Defense Counsel - Worcester Region

Prosecutors - Lowell Region
Prosecutors - Springfield Region
Prosecutors - New Bedford Region
Prosecutors - Boston Region
Prosecutors - Worcester Region

Massachusetts Sheriffs Association
Chiefs of Police Association
Chief Probation Officers
Massachusetts Parole Board
Department of Correction
Inmate Legal Services
Massachusetts Judges Conference
Massachusetts Association of Sentencing Services
Council for Public Justice / Crime and Justice Foundation
Domestic Violence Working Group of the Trial Court

Attachment B. Intermediate Sanctions Committee

Chair

Pamela L. Hunt, Esq.
Assistant Attorney General
Office of the Attorney General

Chief Justice for Administration and Management of the Trial Court Designee

Donald Moran, Chief Supervisor
Superior Court Probation Services

Secretary of Health and Human Services Designee

William O'Leary, Esq.
Commissioner
Department of Youth Services

Secretary of Public Safety Designee

John Flynn, Esq.
General Counsel
Executive Office of Public Safety

Massachusetts Sentencing Commission Members

Honorable Margaret R. Hinkle
Superior Court, Associate Justice

S. Jane Haggerty, Esq.
Assistant District Attorney
Essex County District Attorney's Office

Michael J. Traft, Esq.
Private Attorney
Carney & Bassil, Boston

Donald Cochran
Commissioner
Office of the Commissioner of Probation

Sheila A. Hubbard, Esq.
Chair, Massachusetts Parole Board

Maria F. Rodriguez, Esq.
Director of Victim's Services
Hampden County District Attorney's Office

Attachment C. Massachusetts Sentencing Commission Membership

Commission Members

Judges

Honorable Robert A. Mulligan, Chair
Chief Justice, Superior Court

Honorable Margaret R. Hinkle
Associate Justice, Superior Court

Honorable Mark H. Summerville
Associate Justice, Boston Municipal Court

Prosecutors

R. Jack Cinquegrana, Esq.
Suffolk County District Attorney's Office

S. Jane Haggerty, Esq.
Essex County District Attorney's Office

Pamela L. Hunt, Esq.
Office of the Attorney General

Defense

Michael J. Traft. Esq.,
Private Attorney, Boston

William Robinson, Esq.
Committee for Public Counsel Services

Thomas G. Murray, Esq.
Private Attorney, Boston

Sheriffs Association

Cathleen E. Campbell, Esq., Counsel
Suffolk County Sheriff's Department
(June, 1994 - May, 1995)

Mariellen Fidrych, Executive Director
MA Sheriff's Association
(June, 1995 - Present)

Parole Board

Sheila A. Hubbard, Esq.
Chair, Parole Board

Public Safety

John F. Flynn, Esq.
Executive Office of Public Safety

Victim Assistance Board

Maria F. Rodriguez, Esq.
Director of Victim's Services
Hampden County District Attorney's Office

Department of Correction

David Slade, Esq.
Office of the General Counsel
Department of Correction

Probation

Donald Cochran, Commissioner
Office of the Commissioner of Probation

District Court Liaison to Sentencing Commission

Honorable Timothy Gailey
Lynn District Court

Special Designees to Intermediate Sanctions Committee

Chief Justice for Administration and Management of the Trial Court Designee

Donald Moran, Supervisor
Chief Probation Services

Secretary of Health and Human Services Designee

William O'Leary, Commissioner
Department of Youth Services

Secretary of Public Safety Designee

John Flynn, General Counsel
Executive Office of Public Safety

Staff

Francis J. Carney, Jr.
Executive Director

Linda K. Holt
Research Director

Lee Kimball
Research Analyst

Clare Duffy
Executive Assistant

Attachment D. Illustrative Sentencing Guidelines Grid

Level	Illustrative Offense	Target Sentence					
9	Murder						
8	Rape of Child with Force Aggravated Rape Armed Burglary						
7	Kidnapping for Extortion Rape Arson/Dwelling						
6	Assault with Intent Rape A&B w/DW - significant injury						
5	Unarmed Robbery A&B w/DW - moderate injury Burglary/Unarmed	IS-IV IS-III IS-II	IS-IV IS-III IS-II	IS-IV IS-III IS-II			
4	Attempted Extortion A&B w/DW - minor injury Larceny from person	IS-IV IS-III IS-II	IS-IV IS-III IS-II	IS-IV IS-III IS-II	IS-IV IS-III IS-II		
3	A&B Larceny $250 to $10,000	IS-IV IS-III IS-II IS-I	IS-IV IS-III IS-II IS-I	IS-IV IS-III IS-II IS-I	IS-IV IS-III IS-II IS-I	IS-IV IS-III IS-II	IS-IV IS-III IS-II
2	Assault Vandalism	IS-III IS-II IS-I	IS-III IS-II IS-I	IS-III IS-II IS-I	IS-III IS-II IS-I	IS-IV IS-III IS-II IS-I	IS-IV IS-III IS-II IS-I
1	Poss. of Hypodermic Use Motor Vehicle w/o Authority	IS-II IS-I	IS-II IS-I	IS-III IS-II IS-I	IS-III IS-II IS-I	IS-IV IS-III IS-II IS-I	IS-IV IS-III IS-II IS-I
Criminal History Scale		A	B	C	D	E	F

Criminal History Groups

F — **Repeat Violent Offender**
Two or more prior convictions for felonies in levels 7 through 9

E — **Serious Violent Felon**
One prior conviction for felonies in levels 7 through 9 OR
Three or more prior convictions for felonies in levels 4 through 6

D — **Serious Felon**
One or two prior convictions for felonies in levels 4 through 6 OR
Five or more prior convictions for felonies in levels 1 through 3 OR
Five or more prior convictions for person misdemeanors

C — **Non-Violent Felon**
One to four prior convictions for felonies in levels 1 through 3 OR
One to four prior convictions for person misdemeanors

B — ***Minor Record***
One or more prior convictions for non-person misdemeanors

A — **No Record**
No prior convictions of any kind

Sentencing Zones

Incarceration Only Zone

Discretionary Zone
(Incarceration/Intermediate Sanction)

Intermediate Sanction Zone

Intermediate Sanctions Levels

IS-IV — Halfway House, Inpatient Alcohol/Drug Facility, Home Confinement, Day Reporting Center

IS-III — Electronic Monitoring, Intensive Probation Supervision, Special Curfew Supervision

IS-II — *Maximum, Moderate, Minimum Risk/Need Supervision*

IS-I — Administrative Probation Supervision